

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS/ST. JOHN**

ANDRE HARRIGAN and COLLEEN HARRIGAN,	)	
his wife,	)	
	)	Civil No. 08-CV-124
Plaintiffs,	)	
	)	
v.	)	
	)	
TROPICAL SHIPPING AND CONSTRUCTION	)	
COMPANY LIMITED, THIEN & HEYENGA	)	
GMBH and CIS SHIPPING INTERNATIONAL,	)	
INC.	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	
	)	

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**DEFENDANT'S OPPOSITION TO MOTION IN LIMINE  
RE: DR. BABU SUBRMANIAM**

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Defendants, TROPICAL SHIPPING AND CONSTRUCTION CO., LTD., THIEN & HEYENGA GMBH and CIS SHIPPING INTERNATIONAL, INC., by and through undersigned counsel, hereby respectfully oppose Plaintiffs' Motion to exclude the report and testimony of Dr. Babu Subramaniam.

Plaintiffs claim that Dr. Subramaniam committed fraud in that he notes in his report certain comments made by himself and Mr. Harrigan in the course of the interview in connection with Dr. Subramaniam's evaluation of Mr. Harrigan. First, Plaintiffs' claim of fraud is obviously quite reckless in that the simple assertion of a fact alone which may be disputed by another party simply does not amount to fraud. *Black's Law Dictionary 685 (8<sup>th</sup> ed. 2004)*. Plaintiffs have not supplied the Court with credible evidence to support the elements of fraud. Second, and more troubling, is that Plaintiffs attempt to rely upon a witness who is elderly, apparently has no medical training and which was demanded by Plaintiffs purportedly because

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Mr. Harrigan required an escort. Plaintiffs' ulterior motive has now become quite apparent. Regardless of this subterfuge orchestrated by Plaintiffs, whatever Ms. Vasconcellos claims simply goes to the weight to be given the expert's testimony. The mere statement by Ms. Vasconcellos does not make it a fact. There is no challenge to Dr. Subrmaniam's qualifications, methodology, etc. and therefore in deference to the Federal Rules of Evidence and corresponding decisional authority, Plaintiff's request to exclude Dr. Subrmaniam is properly denied.

Respectfully submitted,  
HUNTER COLE & BENNETT

Dated: March 31, 2010

By: s/ Bruce P. Bennett  
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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31st day of March, 2010, I electronically served the foregoing as following:

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